

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
CHRISTENSEN *et al.* ) Group Art Unit: 1651  
Application No.: 10/529,375 ) Examiner: I. Marx  
Filed: October 28, 2005 )  
For: GRASS ENDOPHYTES ) Confirmation No.: 4788

Mail Stop Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT**

In accordance with 37 C.F.R. § 1.705(b), Applicants apply for a patent term adjustment under 35 U.S.C. § 154(b) of 365 days. This Application is being filed concurrently with the payment of the issue fee, which satisfies the requirements of 37 C.F.R. § 1.705(b).

**I. Statement of the Facts Involved**

**A. Correct Patent Term Adjustment**

A Notice of Allowance, Determination of Patent Term Adjustment, Notice of Allowability were mailed from the Patent and Trademark Office (PTO) on February 9, 2009. The Determination of Patent Term Adjustment indicated that this application is entitled to 28 days of patent term adjustment. A copy of the Determination of Patent Term Adjustment is enclosed for reference.

Applicants have calculated a patent term adjustment of 365 days, *i.e.*, 337 additional days, based on the following facts:

This application is the National Stage of International Application No. PCT/NZ2003/000219, filed September 26, 2003. The requirements of 35 U.S.C. § 371 were completed on October 28, 2005.

On January 25, 2007, the PTO mailed a final Office Action. Based on the mail date of that Office Action, there would have been a PTO delay of 28 days. However, the final Office Action was mailed in error and the PTO vacated it in an Office Communication mailed April 12, 2007. A copy of the Office Communication is enclosed for reference. Because the final Office Action was mailed in error, the mailing date of that Office Action did not stop any accrual of PTO delay based on the 14 month date.

On December 28, 2007, the PTO mailed a Restriction Requirement. Since the final Office Action mailed January 25, 2007, was vacated, December 28, 2007, is the mail date of the first Office Action in this application. That mail date was 14 months and 365 days after the October 28, 2005, fulfillment of all requirements under 35 U.S.C. § 371. Accordingly, the delay on the part of the PTO was **365** days.

For the remainder of prosecution, there were no delays on the part of either Applicants or the PTO. Specifically, Applicants timely responded to the Restriction Requirement on January 25, 2008. The PTO mailed a non-final rejection on April 21, 2008. Applicants responded on July 21, 2008. On September 22, 2008, the PTO mailed a Final Office Action to which Applicants responded by filing a Request for Continued Examination on December 22, 2008. The PTO issued a Notice of Allowance on February 9, 2009.

Based on the forgoing facts, the total PTO delay was 365 days and the total Applicant delay was 0 days.

Applicants respectfully submit that because the January 25, 2007, final Office Action was erroneously mailed and subsequently vacated, they are entitled to a total patent term adjustment of 365 days due to the PTO delay.

**B. Terminal Disclaimer**

This application is not subject to a Terminal Disclaimer.

**C. Reasonable Efforts**

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of this application, as set forth in 37 C.F.R. § 1.704.

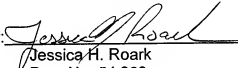
**II. Fee**

As required by 37 C.F.R. § 1.705(b)(1), this Application is accompanied by credit card authorization for \$200.00 to cover the required fee. Please charge any deficiencies to our Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 27, 2009

By:   
Jessica H. Roark  
Reg. No. 54,869



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,375	10/28/2005	Michael John Christensen	08059.0013	4788
22852	7590	02/09/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER	
			MARX, IRENE	
			ART UNIT	PAPER NUMBER
			1651	
DATE MAILED: 02/09/2009				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 28 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 28 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,375	10/28/2005	Michael John Christensen	08059.0013	4788

22852 7590 04/12/2007  
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EXAMINER

HELLNER, MARK

ART UNIT

PAPER NUMBER

3663

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/529 375

EXAMINER
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ART UNIT	PAPER
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20070410

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The final rejection mailed 01/25/2007 is vacated. This action was incorrectly mailed to the applicant.

*Mark Helmer*  
Mark Helmer  
Primary Examiner  
AU 3663